

# GENERAL TERMS & CONDITIONS OF TRADE



## General terms of payment and delivery of MICROS Optics GmbH & Co. KG (following called MICROS Optics)

**1. Scope:** The following general terms & conditions of payment and delivery apply to all transactions between MICROS Optics and the purchaser, even if they are not specifically mentioned in subsequent contracts. They also apply if the purchaser refers to his own terms, unless we have expressly agreed to them in writing. These conditions of sale apply exclusively and only to companies and legal entities of public law.

**2. Conclusion of contracts:** Our offers are subject to change. They are applicable to delivery ex works, excluding insurance and packaging. Contracts and agreements shall only be binding following our written consent. A contract is only effective following the confirmation of an order, an order or execution of the ordered delivery.

**3. Period of delivery:** The delivery period shall commence, unless otherwise agreed, with the dispatch or confirmation of the order, but not before the provision of the documents, permits, approvals and receipt of an agreed advance payment by the purchaser, as the case may be. The delivery period is deemed to be met before its expiration if the dispatch has been notified or the goods have left the factory. The delivery period shall be extended accordingly in case of labour disputes, strikes and lockouts, and unforeseen circumstances that are beyond our control, such as breakdowns, delays in the delivery of essential materials, provided such hindrances are proved to have considerably influenced the delivery of the object. The same applies if such circumstances occur at the suppliers end. The delivery period shall be extended by the duration of such measures and hindrances accordingly. The aforementioned circumstances are also not our responsibility if they occur during an already existing delay. The beginning and end of such hindrances shall be communicated at the earliest to the purchaser by us. Partial deliveries are permitted within the delivery times specified by us, provided no disadvantages are caused by them for the use.

**4. Scope of delivery:** The scope of delivery shall be determined by our written confirmation of order. Structural or design changes due to improvements of technology and stipulations by the legislature are reserved during the delivery period, provided the delivery item is not significantly changed and the changes are reasonable for the purchaser. If tools must be made for the production, which are based on the drawings and technical specifications of the purchaser, the purchaser shall not have any rights to the manufactured tools. We reserve the right of ownership and copyright on all documents submitted in connection with the award of the contract to the purchaser, such as calculations, drawings and so on. These documents shall not be disclosed to third parties, unless the purchaser has received our express consent in writing.

**5. Cancellation charges:** If the purchaser withdraws from the agreement without justification, we may, notwithstanding the possibility, demand fulfilment of the contract, or claim damages higher than the actual, in the event of cancellation of the contract 10% of the net sales price (based on the order quantity) for the costs incurred in processing the order and ask for the loss of profit. The purchaser shall be entitled to prove that damages were lower than suggested.

**6. Packing and dispatch:** Packing shall become property of the purchaser and be charged by us. Postage and packing charges shall be invoiced separately, unless otherwise agreed.

**7. Acceptance and transfer of risk:** The purchaser is obliged to accept the delivery item within 14 days of notification of availability. If delivery by us is not expressly agreed upon, the transfer shall take place at the respective contracted works of MICROS Optics. The purchaser must inspect the delivered goods within 14 days of acceptance for any errors. If the purchaser defaults the acceptance of the purchased object, we are entitled, after setting a grace period of 14 days, to cancel the contract and to claim damages for non-performance. Setting a grace period is not required if the purchaser seriously and finally refuses acceptance or is obviously also not in a position to make the payment of the purchase price within this period. If the goods are sent to him at the purchaser's request, the risk of accidental loss or accidental deterioration of the goods shall pass to the purchaser following the dispatch of the same to the purchaser at the latest on leaving the factory / warehouse. This applies regardless of whether the goods are dispatched from the place of performance or who bears the freight costs. If the purchaser declares that he would not accept the delivery, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the purchaser in the event of a refusal.

**8. Price changes:** Price changes are allowed if there are more than 12 weeks between signing of the contract and the agreed delivery date. If thereafter until the completion of the delivery wages, material costs or market cost prices have gone up, we are entitled to increase the price appropriately according to the cost increase. The purchaser is only entitled to withdraw if the price increase exceeds the general increase in the cost of living between the date of order and the delivery significantly. This does not apply to basic contracts agreed upon.

**9. Warranty:** A defect is present in the goods supplied by us if they do not possess the quality agreed on. It is incumbent on the purchaser to inspect the goods supplied by us upon delivery immediately for their proper condition and to notify us of any existing deficiencies. Obvious defects must be reported within 14 days of delivery. Defects not obvious must be reported in writing immediately upon discovery. For merchants the clause § 377 HGB (German Commercial Code) shall be applicable. If a defect is present in the delivered item, we shall be entitled at our discretion to supply a replacement or remedy the defect. In this case, we are obliged to bear the necessary cost of transport, travel, labour and material, provided that these do not increase. If rectification / replacement should fail and is untenable, is refused by us or the reasonable time limit set by the purchaser has expired, the purchaser is entitled to claim a credit for the defective parts. Compensation claims by the purchaser against us on account of the defect shall only be entertained in the context of the following liability provisions. The warranty period for rectification of defects, replacement, withdrawal and reduction shall be one

year from the date of transfer of risk. The right to claim damages for defects shall lapse after one year calculated from the date of transfer of risk.

**10. Liability for breach of obligation:** In case of any breach contractual obligation, with the exception of defective goods supplied, the purchaser may only cancel the contract and claim damages, if a reasonable period set by him to us for providing the contractual services has expired without the services being provided by us under the contract. We are only liable for damages resulting from contractual a breach of obligation (delay, impossibility, imperfection, breach of contractual secondary obligations) if the breach of obligation is based on an intentional or grossly negligent action, unless the contractual obligation in question is a significant contractual obligation. Should we be liable for wilful or grossly negligent breach of a contractual obligation or culpable violation of an essential contractual obligation for any harm caused, our liability is limited to foreseeable and contractually typical damage covered at the most by the compensation by our public liability insurance. If our liability insurance does not cover or does not cover fully, we shall be liable up to a maximum amount of liability coverage. If our liability is excluded or limited, this also applies to personal liability of our employees, workers, staff, representatives and vicarious agents. The statutory burden of proof shall not be affected by these regulations.

**11. Retention of title:** We retain title to the delivered goods until payment. If the purchaser delays the payment of our claims in whole or in part, we are entitled, after fruitless expiry of a reasonable grace period for payment, to withdraw from the contract and to demand issue and return of goods delivered, provided that these are still in the possession of the purchaser. The purchaser shall provide us with a list of the remaining items delivered and to allow access to them at any time. Moreover, the purchaser shall also be entitled to resell the delivered goods in the ordinary course of business; however, he assigns all claims on the amount of the purchase price (including VAT) agreed upon between us and the purchaser, which has accrued to the purchaser on reselling, regardless of whether the delivered goods are resold after or without processing. In the event that the receivables of the purchaser are absorbed into a current account, the balance equal to the sum of our claims must be assigned to us, with priority over the remaining part of the balance. The purchaser is entitled to draw these receivables after assigning the dues to us. Our authority to draw the claims ourselves remains unaffected; however, we undertake not to draw the claims as long as the purchaser meets his payment obligations and is not in default of payment. If this is the case nonetheless, we may demand that the purchaser disclose the assigned receivables to the debtor; provide information necessary for collection; hand over the relevant documents and notify the debtors (third parties) of the assignment. The purchaser shall bear all costs associated with the collection of receivables from third parties or to the revocation of the delivery items.

**12. Terms of payment:** The purchase price and the charges for ancillary services are due on delivery of the delivery item for payment subject to other agreements. Cheques and bills of exchange shall be deemed as payment only after redemption. The exchange receipt always requires a prior written agreement with us. Acceptance of bills of exchange shall attract bank discount and collection charges. They shall be paid immediately in cash. The purchaser will be in default if he does not pay our invoices within 30 days of the invoice date. We shall calculate a statutory default interest of 8% p.a. over the base rate of the European Central Bank, unless we can prove a liability at a higher rate of interest. The purchaser may only offset his claims against our claims if these are undisputed by us or legally acceptable. The same applies to the assertion of a lien.

**13. Jurisdiction and applicable law:** For any disputes arising from this contractual relationship, the action must be instituted at the court which is responsible for our headquarters. We are also entitled to sue at the headquarters where ordering party is located. Only German law shall prevail to the exclusion of the law on the international sale of goods, even if the purchaser has his registered office abroad.

**14. Miscellaneous:** Transfer of rights and obligations of the purchaser arising from the contract concluded with us require our written consent. Should the above provisions be or become invalid, the validity of the other provisions shall remain unaffected.